

instructor. Financial responsibility under this section may be evidenced by insurance or other adequate financial resources.

SEC. 5. SUBTITLES IV-VI OF TITLE 46.

Title 46, United States Code, is amended by adding at the end the following new subtitles IV-VI:

SUBTITLE IV-REGULATION OF OCEAN SHIPPING

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PART A-OCEAN SHIPPING

CHAPTER 401-GENERAL

Sec.

40101. Purposes.

40102. Definitions.

40103. Maritime labor agreements.

40104. Assessment agreements.

40105. Administrative exemptions.

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Sec. 40101. Purposes

The purposes of this part are to--

(1) establish a nondiscriminatory regulatory process for the common carriage of cargo by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;

(3) encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs; and

(4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

Sec. 40102. Definitions

In this part--

(1) "agreement"--

(A) means a written or oral understanding, arrangement, or association, or a modification or cancellation of the understanding, arrangement, or association; but

(B) does not include a maritime labor agreement.

(2) "antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8, 9), the Act

of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a), the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.), and Acts that supplement these Acts.

(3) "assessment agreement" means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent the agreement provides for financing collectively bargained fringe-benefit obligations on other than a uniform worker-hour basis, regardless of the cargo handled or type of vessel or equipment used.

(4) "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(5) "chemical parcel-tanker" means a vessel that has--

(A) a cargo-carrying capability consisting of individual cargo tanks for bulk chemicals that--

(i) are a permanent part of the vessel; and

(ii) have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination; and

(B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(6) "common carrier"--

(A) means a person that--

(i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;

(ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; but

(B) does not include a carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel-tanker, or by vessel when primarily engaged in the carriage of perishable agricultural commodities--

(i) if the carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) only with respect to the carriage of those commodities;

(7) "conference"--

(A) means an association of ocean common carriers permitted, under an approved or effective agreement, to engage in concerted activity and to use a common tariff; but

(B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.

(8) "controlled carrier" means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government, with ownership or control by a government deemed to exist for that carrier if--

(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, by any agency of that government, or by a public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(9) "deferred rebate" means a return by a common carrier of any money paid by a shipper to the carrier for transporting freight, where the return is--

(A) in consideration for the shipper's commitment to give all, or a fixed portion, of its shipments to that or any other common carrier over a fixed period of time;

(B) deferred beyond the completion of the service for which it was paid; and

(C) made only if the shipper has agreed to make a further shipment or shipments with that or any other common carrier.

(10) "forest products" means, but is not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, and paper and paper board in rolls or in pallet or skid-sized sheets.

(11) "inland division" means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(12) "inland portion" means the charge to the public by a common carrier for the nonocean portion of through transportation.

(13) "loyalty contract" means a contract with an ocean common carrier or agreement by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or agreement, and where the contract provides for a deferred rebate arrangement.

(14) "marine terminal operator" means a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49.

(15) "maritime labor agreement"--

(A) means--

(i) a collective bargaining agreement between an employer subject to this part, or a group of those employers, and a labor organization representing employees in the maritime or stevedoring industry;

(ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or

(iii) an agreement specifically carrying out provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group; but

(B) does not include an assessment agreement.

(16) "ocean common carrier" means a vessel-operating common carrier.

(17) "ocean transportation intermediary" means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this paragraph--

(A) "ocean freight forwarder" means a person that--

(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges for shippers the space for those shipments; and

(ii) processes the documentation or performs related activities incident to those shipments; and

(B) "non-vessel-operating common carrier" means a common carrier that--

(i) does not operate the vessels by which the ocean transportation is provided; and

(ii) is a shipper in its relationship with an ocean common carrier.

(18) "service contract" means a written contract, other than a bill of lading or a receipt, between one or more shippers, on the one hand, and an individual ocean common carrier or an agreement between or among ocean common carriers, on the other, in which-

(A) the shipper makes a commitment to provide a certain volume or portion of cargo over a fixed time period;

(B) the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features; and

(C) the parties also may specify provisions in the event of nonperformance by either party.

(19) "shipment" means all of the cargo transported under the terms of a single bill of lading.

(20) "shipper" means--

(A) a cargo owner;

(B) the person for whose account the ocean transportation of cargo is provided;

(C) the person to whom delivery of the cargo is to be made;

(D) a shippers' association; or

(E) an ocean transportation intermediary, as defined in paragraph (17)(B) of this section, that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(21) "shippers' association" means a group of shippers that consolidates or distributes cargo on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts.

(22) "tariff" means a publication containing the actual rates, charges, classifications, rules, and practices of a common carrier or a conference of common carriers.

(23) "through rate" means the single amount charged by a common carrier in connection with through transportation.

(24) "through transportation" means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a port or place in the United States and a foreign port or place.

Sec. 40103. Maritime labor agreements

This part does not apply to a maritime labor agreement, as defined in section 40102 of this title. However, this section does not exempt from this part any rate, charge, classification, rule, or practice of a common carrier that is required to be contained in a tariff or are essential terms of a service contract, whether or not the rate, charge, classification, rule, or practice arises out of, or is otherwise related to, a maritime labor agreement.

Sec. 40104. Assessment agreements

(a) Nonapplication.--This part (except this section and section 40305(a)) does not apply to an assessment agreement, as defined in section 40102 of this title.

(b) Filing Requirement.--An assessment agreement shall be filed with the Federal Maritime Commission and is effective on filing.

(c) Complaints.--If a complaint is filed with the Commission within 2 years of the date of an agreement, the Commission shall disapprove, cancel, or modify the agreement, or an assessment or charge under the agreement, that the Commission finds, after notice and opportunity for a hearing, to be unjustly discriminatory or unfair between common carriers, shippers, or ports. The Commission shall issue its final decision in the proceeding within one year after the date the complaint is filed.

(d) Adjustments of Assessments and Charges.--To the extent that the Commission finds under subsection (c) of this section that an assessment or charge is unjustly

discriminatory or unfair, the Commission shall adjust the assessment or charge for the period from the filing of the complaint to the date of the final decision by awarding prospective credits or debits to future assessments and charges. However, if the complainant has ceased activities subject to the assessment or charge, the Commission may award reparations.

Sec. 40105. Administrative exemptions

(a) General Authority.--On application or on its own initiative, the Federal Maritime Commission by order or regulation may exempt for the future any class of agreements among persons subject to this part or any specified activity of those persons from a requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

(b) Conditions and Revocations.--The Commission may impose conditions in granting an exemption and by order may revoke an exemption.

(c) Opportunity for Hearing.--An order or regulation of exemption or revocation of an exemption may be issued or prescribed only if the Commission provides an opportunity for a hearing to interested persons and agencies.

Sec. 40106. Reports

(a) General Authority.--The Federal Maritime Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier to file with the Commission a record, rate, charge, or periodic or special report, related to the business of the carrier. The record, rate, charge, or report shall be under oath if the Commission requires, and shall be filed in the form and at the times prescribed by the Commission.

(b) Confidentiality of Conference Minutes.--The Commission may not--

(1) release conference minutes required to be filed under this section to 3rd parties; or

(2) publish those minutes.

CHAPTER 403-AGREEMENTS

Sec.

40301. Application.

40302. Filing requirements.

40303. Content requirements.

40304. Commission action.

40305. Exemption from antitrust laws.

Sec. 40301. Application

(a) Ocean Common Carriers.--This part applies to an agreement by or among ocean common carriers to--

- (1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
- (2) pool or apportion traffic, revenues, earnings, or losses;
- (3) allot ports or regulate the number and character of voyages between ports;
- (4) regulate the volume or character of cargo or passenger traffic to be carried;
- (5) engage in an exclusive, preferential, or cooperative working arrangement among themselves or with at least one marine terminal operator;
- (6) control, regulate, or prevent competition in international ocean transportation; or
- (7) discuss and agree on any matter related to service contracts.

(b) Marine Terminal Operators.--This part applies to an agreement among marine terminal operators and among at least one marine terminal operator and at least one ocean common carrier to-

- (1) discuss, fix, or regulate rates or other conditions of service; or
- (2) engage in an exclusive, preferential, or cooperative working arrangement, to the extent that the arrangement involves ocean transportation in the foreign commerce of the United States.

(c) Nonapplication of Filing Requirements.--The filing requirements of this part do not apply to--

- (1) an agreement related to transportation to be provided within or between foreign countries; or
- (2) an agreement among common carriers to establish, operate, or maintain a marine terminal in the United States.

(d) Nonapplication of Part.--This part does not apply to an acquisition by any person of any voting security or assets of any other person.

Sec. 40302. Filing requirements

(a) General Requirement.-A true copy of each agreement to which this part applies or, if oral, a complete memorandum specifying in detail the substance of the agreement, shall be filed with the Federal Maritime Commission.

(b) Regulations.-The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and any additional information and documents necessary to evaluate the agreement.

Sec. 40303. Content requirements

(a) Ocean Common Carrier Agreements.--(1) An ocean common carrier agreement may not--

(A) prohibit or restrict a member of the agreement from engaging in negotiations for a service contract with a shipper;

(B) require a member of the agreement to disclose a negotiation on a service contract, or the terms of a service contract, other than those terms required to be published under section 40502(b)(2) of this title; or

(C) adopt mandatory rules or requirements affecting the right of an agreement member to negotiate and enter into a service contract.

(2) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. Any guidelines adopted shall be submitted confidentially to the Federal Maritime Commission.

(b) Conference Agreements.--Each conference agreement must--

(1) state its purpose;

(2) provide reasonable and equal terms for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw on reasonable notice from conference membership without penalty;

(4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 41306(a)(1) or (3) of this title;

(6) provide for a consultation process designed to promote--

(A) commercial resolution of disputes; and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering requests and complaints of shippers; and

(8) provide that--

(A) any member of the conference may take independent action on a rate or service item on not more than 5 calendar days' notice to the conference; and

(B) the conference will include the new rate or service item in its tariff, except for an exempt commodity not published in the tariff, for use by that member, effective not later than 5 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in place of the existing rate or service item in the conference tariff.

(c) Interconference Agreements-- (1) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(2) Each agreement between conferences must provide the right of independent action for each conference.

(d) Vessel Sharing Agreements.--An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a United States-flag liner vessel documented under section 12103 of this title is authorized to condition a charter or subcharter of the vessel, or space on the vessel, so that the chartering party is not allowed to make available space on the vessel for carriage of cargo reserved by law for United States-flag vessels, if the chartering party is not--

(1) the owner of a United States-flag liner vessel eligible to be included in the Maritime Security Fleet Program and enrolled in an Emergency Preparedness Program under chapter 531 of this title; or

(2) the operator or bareboat charterer of such a vessel for a period of at least 1 year.

Sec. 40304. Commission action

(a) Notice of Agreement Filing.--Within 7 days after an agreement is filed under section 40302 of this title, the Federal Maritime Commission shall submit a notice of the filing to the Federal Register for publication.

(b) Preliminary Review and Rejection.--After preliminary review, the Commission shall reject an agreement that does not satisfy the requirements of sections 40302 and 40303 of this title. The Commission shall notify in writing the person filing the agreement of the reason the agreement was rejected.

(c) Effective Date and Requests for Additional Information.--(1) An agreement (except an assessment agreement) not rejected under subsection (b) of this section is effective--

(A) on the 45th day after the agreement is filed, or on the 30th day after notice of the filing is published in the Federal Register, whichever is later; or

(B) if additional information or documents are requested under paragraph (2) of this subsection,

(i) on the 45th day after the Commission receives all the additional information and documents requested; or

(ii) if the request is not completely complied with, on the 45th day after the Commission receives the information and documents submitted and a statement of the reasons for not complying completely with the request.

(2) Before the expiration of the period specified in paragraph (1)(A) of this subsection, the Commission may request from the person filing the agreement additional information and documents the Commission considers necessary to make a decision required by this section.

(3) The period specified in paragraph (1)(B) of this subsection may be extended only by the United States District Court for the District of Columbia in a civil action brought by the Commission under section 41110(c) of this title.

(4) On request of the party filing an agreement, the Commission may shorten a period specified in paragraph (1) of this subsection. However, a period may not be shortened to a date that is less than 14 days after the notice of the filing of the agreement is published in the Federal Register.

(d) Disapproval, Cancellation, or Modification After Investigation--(1) Except as provided in section 41110(b) of this title, the Commission by order may disapprove,

cancel, or modify an agreement that violates this part, as determined in a proceeding begun as a result of a sworn complaint or investigation under section 41101 or 41102 of this title.

(2) Except if an injunction is granted under sections 41110(a) or 41111 of this title, an agreement under investigation remains in effect until the Commission issues an order under section 41102 of this title.

(e) Fixed Term Prohibition.--The Commission may not limit the effectiveness of an agreement to a fixed term.

(f) Nondisclosure of Information.--(1) Except for an agreement filed under section 40302 of this title, information and documents filed with the Commission under this section and section 40302 are exempt from disclosure under section 552 of title 5 and may not be made public except as may be relevant to an administrative or judicial proceeding.

(2) This subsection does not prevent disclosure to either House of Congress or to an authorized committee or subcommittee.

Sec. 40305. Exemption from antitrust laws

(a) General.--The antitrust laws do not apply to--

(1) an agreement filed under section 40104 of this title, or filed under section 40302 of this title, that is effective under section 40104 or 40304 of this title, respectively, or is exempt under section 40105 of this title from any requirement of this part;

(2) an agreement or activity within the scope of this part, whether permitted under or prohibited by this part, undertaken or entered into with a reasonable basis to conclude that the activity or agreement is--

(A) covered by an agreement on file with the Federal Maritime Commission and in effect when the activity takes place; or

(B) exempt under section 40105 of this title from any filing or publication requirement of this part;

(3) an agreement or activity related to transportation within or between foreign countries, whether or not by way of the United States, unless that agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(4) an agreement or activity relating to the foreign inland segment of through transportation that is part of transportation provided in United States import or export commerce;

(5) an agreement or activity to provide wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(6) an agreement, modification, or cancellation approved by the Commission before June 18, 1984, under section 15 of the Shipping Act, 1916, or as permitted under section 14b of the Shipping Act, 1916, and any properly published tariff, rate, fare, or charge, classification, or rule implementing that agreement, modification, or cancellation.

(b) Exceptions.--This part does not provide antitrust immunity to--

(1) an agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this part for transportation within the United States;

(2) a discussion or agreement among common carriers subject to this part about the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) an agreement among common carriers subject to this part to establish, operate, or maintain a marine terminal in the United States; or

(4) a loyalty contract.

(c) Retroactive Effect of Agency and Court Decisions.-A decision by an agency or court that results in the denial or removal of the immunity to the antitrust laws provided by subsection (a) of this section does not remove or change antitrust immunity for the period before the decision.

(d) Relationship to Other Laws.-A person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain an injunction under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by this part.

CHAPTER 405--TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS

Sec.

40501. General rate and tariff requirements.

40502. Service contracts.

40503. Refunds and waivers.

Sec. 40501. General rate and tariff requirements

(a) General Requirements.--(1) Except for bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, and paper waste, each common carrier and conference shall keep open to public inspection in an automated tariff system its rates, charges, classifications, rules, and practices between all places or ports on its own route and on any through route that has been established. However, a carrier is not required to state separately or otherwise reveal in tariffs the inland divisions of a through rate.

(2) A tariff published under this section shall--

(A) state the places between which cargo will be transported;

(B) list each classification of cargo in use;

(C) state the level of compensation of any ocean transportation intermediary, as defined in section 40102(17)(A) of this title, by a common carrier or conference;

(D) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference publishing the tariff and any rules that in any way change, affect, or determine any part or the total of the rates or charges;

(E) include sample copies of any bill of lading, contract of affreightment, or other document that is evidence of a transportation agreement; and

(F) include copies of any loyalty contract, omitting the shipper's name.

(3) The carrier or conference publishing the tariff shall make a copy of the tariff available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations, and may charge a reasonable fee for access, except for access by a federal agency.

(b) Time-Volume Rates.--A rate contained in a tariff published under subsection (a) of this section may vary with the volume of cargo offered over a specified period of time.

(c) Effective Dates.--(1) A new or initial rate or a change in an existing rate that results in an increased cost to a shipper may not become effective until the 30th day after the day the rate is published. However, for good cause, the Federal Maritime Commission may allow the rate to become effective sooner.

(2) A change in an existing rate that results in a decreased cost to a shipper may become effective on publication.

(d) Marine terminal operator schedules.--(1) A marine terminal operator may make available to the public, subject to sections 41304(a)(3) and (4) of this title, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal.

(2) The means to enforce a schedule made available to the public under this subsection is a civil action to enforce the schedule as an implied contract, without a requirement for proof of actual knowledge of its provisions, in an appropriate court.

(e) Regulations.--(1) The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission may, after periodic review, prohibit the use of any automated tariff system that fails to meet the requirements established under this section.

(2) The Commission may not require a common carrier to provide a remote terminal for access under subsection (a)(3).

(3) The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

Sec. 40502. Service contracts

(a) General Authority.--(1) An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this part.

(2)(A) The only remedy for a breach of a service contract made under this section is a civil action in an appropriate court, unless the parties otherwise agree.

(B) A contract-dispute-resolution forum used under this section may, in no case, be controlled by or affiliated with a controlled carrier or by the government that owns or controls the carrier.

(b) Filing requirements.--(1) Except for a service contract dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste, each contract under this section shall be filed confidentially with the Federal Maritime Commission.

(2) When a service contract is filed confidentially with the Commission, a concise statement of the essential terms of the contract described in subsections (c)(1), (3), (4), and (6) shall be published and made available to the general public in tariff format.

(c) Essential Terms.--Each service contract under this section shall include the following essential terms:

- (1) The origin and destination port ranges.
- (2) The origin and destination geographic areas in the case of through intermodal movements.
- (3) Each commodity involved.
- (4) The minimum volume or portion.
- (5) The line-haul rate.
- (6) The duration.
- (7) Service commitments.
- (8) Any liquidated damages for nonperformance.

(d) Disclosure of certain terms.--(1) An ocean common carrier that is a party to, or is subject to, the provisions of a collective bargaining agreement with a labor organization shall, in response to a written request by the labor organization, state whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transportation under a service contract described in this subsection:

(A) the movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area;

(B) the assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

(C) the assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; and

(D) the assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(2) The common carrier shall provide the information described in paragraph (1) of this subsection to the requesting labor organization within a reasonable period of time.

(3) This subsection requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement that pertains to that carrier. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under

such agreement shall be resolved solely under the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this paragraph.

(4) Nothing in this subsection shall have any effect on the lawfulness or unlawfulness under this part, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other federal or state law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under this section.

(5) For purposes of this subsection, the terms "dock area" and "within the port area" have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

Sec. 40503. Refunds and waivers

On application of a carrier or shipper, the Federal Maritime Commission may permit a common carrier or conference to refund a part of the freight charges collected from a shipper, or to waive collecting a part of the charges from a shipper, if--

(1) there is an error in a tariff, in failing to publish a new tariff, or an error in quoting a tariff, and the refund or waiver will not result in discrimination among shippers, ports, or carriers;

(2) before filing an application for permission to make a refund or waiver for an error in a tariff or a failure to publish a tariff, the common carrier or conference has published a new tariff that contains the rate on which the refund or waiver would be based; and

(3) the application for the refund or waiver is filed with the Commission within 180 days from the date of shipment.

CHAPTER 407-CONTROLLED CARRIERS

Sec.

40701. General requirements.

40702. Standards.

40703. Effective date and requests for information.

40704. Prohibition, suspension, and rejection.

40705. Presidential review of Commission orders.

40706. Non-application.

Sec. 40701. General requirements

(a) Prohibitions.--A controlled carrier may not--

(1) maintain a rate or charge in its tariffs or service contracts, or charge or assess a rate, that is below a just and reasonable level; or

(2) establish, maintain, or enforce in its tariffs or service contracts a classification, rule, or practice that results, or is likely to result, in transporting or handling cargo at a rate or charge that is below a just and reasonable level.

(b) Commission Prohibition.--At any time after notice and opportunity for a hearing, the Federal Maritime Commission may prohibit the publication or use of a rate, charge, classification, rule, or practice that the controlled carrier fails to demonstrate to be just and reasonable.

(c) Burden of Proof.--In a proceeding under this section, the burden of proof is on the controlled carrier to demonstrate that a rate, charge, classification, rule, or practice is just and reasonable.

(d) Voidness.--A rate, charge, classification, rule, or practice that the Commission suspends or prohibits is void, and its use is unlawful.

Sec. 40702. Standards

(a) General.--(1) In deciding whether a rate, charge, classification, rule, or practice of a controlled carrier is just and reasonable under this chapter, the Federal Maritime Commission shall take into account whether the rate or charge published or assessed, or which would result from the pertinent classification, rule, or regulation, is below a level that is fully compensatory to the controlled carrier, based on the carrier's actual costs or its constructive costs.

(2) In this subsection, "constructive costs" means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(b) Additional Factors.-- The Commission may consider other appropriate factors in making a decision under this section, including whether--

(1) the rate, charge, classification, rule, or practice is the same as, or similar to, that published or assessed by other carriers in the same trade;

(2) the rate, charge, classification, rule, or practice is required to ensure movement of particular cargo in the same trade; or

(3) the rate, charge, classification, rule, or practice is required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

Sec. 40703. Effective date and requests for information

(a) General.-Notwithstanding section 40501(c) of this title, and except for service contracts, a rate, charge, classification, rule, or practice of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after the day the rate, charge, classification, rule, or practice is published.

(b) Statements of Justification.-With respect to an existing or proposed rate, charge, classification, rule, or practice, on request of the Commission, each controlled carrier shall file with the Commission, within 20 days of the Commission's request, a statement of justification that sufficiently details the carrier's need and purpose for the rate, charge, classification, rule, or practice.

Sec. 40704. Prohibition, suspension, and rejection

(a) General.-- Not later than 120 days after the receipt of information requested by the Federal Maritime Commission under section 40703 of this title, the Commission shall determine whether a rate, charge, classification, rule, or practice of a controlled carrier is unjust and unreasonable.

(b) Show Cause Orders.-When the Commission concludes that a rate, charge, classification, rule, or practice published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why the rate, charge, classification, rule, or practice should not be prohibited.

(c) Suspension Pending Decision.-(1) Pending a decision concerning the lawfulness of a rate, charge, classification, rule, or practice in a proceeding begun under subsection (b) of this section, the Commission may suspend the rate, charge, classification, rule, or practice at any time before it becomes effective.

(2) If a rate, charge, classification, rule, or practice has become effective, the Commission, on issuing the order to show cause, may suspend the rate, charge, classification, rule, or practice on at least 30 days notice to the controlled carrier.

(3) A period of suspension under this subsection may not be for more than 180 days.

(d) New Rate, Charge, Classification, Rule, or Practice During Suspension.-- When the Commission has suspended a rate, charge, classification, rule, or practice under this section, the affected controlled carrier may publish a new rate, charge, classification, rule, or practice to become effective immediately during the suspension period in place of the suspended rate, charge, classification, rule, or practice. However, the Commission may reject the new rate, charge, classification, rule, or practice if the Commission believes that it is unjust and unreasonable.

Sec. 40705. Presidential review of Commission orders

(a) Submission to President.-The Federal Maritime Commission shall submit to the President each suspension order and each final prohibition order issued under section 40704 of this title at the same time that the Commission publishes the order.

(b) Presidential Request and Commission Action.-Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a) of this section, the President may make a written request to the Commission to stay the effect of the Commission order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission immediately shall grant the request by issuing an order in which the President's request shall be described. During the period that a Commission order is stayed, the President, when practicable, shall attempt to resolve the matter by negotiating with representatives of the governments of the foreign countries involved.

Sec. 40706. Non-application

This chapter does not apply to--

(1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(2) a trade served only by controlled carriers.

CHAPTER 409-OCEAN TRANSPORTATION INTERMEDIARIES

Sec.

40901. License requirements.

40902. Financial responsibility.

40903. Suspending and revoking licenses.

40904. Compensation by common carriers.

Sec. 40901. License requirements

(a) General Requirements.-A person in the United States may act as an ocean transportation intermediary only if that person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue an ocean transportation intermediary's license to a person that the Commission decides is qualified by experience and character to provide ocean transportation intermediary services.

(b) Exception.-A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license issued under this section.

Sec. 40902. Financial responsibility

(a) General Requirements.-- A person may act as an ocean transportation intermediary only if that person furnishes a bond, proof of insurance, or other surety--

(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

(2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Scope Of Financial Responsibility--A bond, insurance, or other surety obtained under this section--

(1) shall be available to pay any order for reparation issued under sections 41101 or 41106 of this part, or any penalty assessed pursuant to section 41109 of this part;

(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities--

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, provided the claimant has first attempted to resolve the claim pursuant to paragraph (2) of this subsection and the claim has not been resolved within a reasonable period of time.

(c) Regulations On Court Judgments.--(1) The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments.

(2) The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(d) Designation Of Agent.--An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

Sec. 40903. Suspending and revoking licenses

(a) Failure To Maintain Qualifications or Comply.--After notice and opportunity for a hearing, the Federal Maritime Commission shall suspend or revoke an ocean transportation intermediary's license issued under section 40901 of this title if the Commission finds that the ocean transportation intermediary--

(1) is not qualified to provide intermediary services; or

(2) willfully did not comply with this part or with an order or regulation of the Commission.

(b) Failure To Maintain Bond, Proof Of Insurance, Or Other Surety.--The Commission may revoke an ocean transportation intermediary's license for failing to maintain a bond, proof of insurance, or other surety as provided under section 40902 of this title.

Sec. 40904. Compensation by common carriers

(a) General Requirements.--A common carrier may compensate an ocean transportation intermediary, as defined in section 40102(17)(A) of this title, for a shipment dispatched for others only when the intermediary has certified in writing that it holds an ocean transportation intermediary's license, if required under section 40901 of this title, and has--

(1) engaged, booked, secured, reserved, or contracted directly with that carrier or its agent for space on a vessel or confirmed the availability of the space; and

(2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) Dual Compensation Prohibition.--A common carrier may not pay compensation for services described in subsection (a) of this section more than once for the same shipment.

(c) Prohibition for Beneficial Interest Shipments.--An ocean transportation intermediary may not receive compensation from a common carrier for a shipment in which the intermediary has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.

(d) Independent Action; Compensation Limits.--A conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean transportation intermediary, as defined in section 40102(17)(A) of this title, may not--

(1) deny a member of the conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean transportation intermediary, as so defined; and

(2) agree to limit the payment of compensation to an ocean transportation intermediary, as so defined, to less than 1.25 percent of the aggregate of all rates and charges applicable under a tariff and assessed against the cargo on which the intermediary services are provided.

CHAPTER 411-ENFORCEMENT

Sec.

41101. Sworn complaint procedures.

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Sec. 41101. Sworn complaint procedures

(a) Filing Complaints.--A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part (except section 41110(b)), and may request reparations for an injury to the complainant caused by the violation. Reparations may only be awarded if the complaint is filed within 3 years after the claim accrues.

(b) Providing Copies and Responding to Complaints.--The Commission shall provide a copy of a complaint filed under this section to each person named in the complaint. Within a reasonable time specified by the Commission, that person shall satisfy the complaint or answer it in writing.

(c) Commission Action If Complaint Not Satisfied.--If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

Sec. 41102. Investigations

(a) General Authority.-On complaint or on its own initiative, the Federal Maritime Commission may investigate any conduct or agreement that the Commission believes may be in violation of this part.

(b) Reports.--(1) The Commission shall--

(A) make a written report of each investigation made under this part in which a hearing was held, stating the Commission's conclusions, decisions, findings of fact, and order;

(B) provide a copy of the report to each of the parties named in the investigation; and

(C) publish each report and make it available to the public.

(2) A published report is competent evidence in any court of the United States.

Sec. 41103. Final decision time requirements

(a) Deadline for Final Decisions.-Within 10 days after beginning a proceeding under section 41101 or 41102 of this title, the Federal Maritime Commission shall set a date by which the Commission will issue its final decision in the proceeding. The Commission by order may extend the date for good cause.

(b) Sanctions for Unreasonable Delay.-If, before the date set under subsection (a) of this section, the Commission decides that it is unable to issue a final decision because of unreasonable delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.

Sec. 41104. Discovery and subpoenas

(a) General Authority.--(1) In an investigation or adjudicatory proceeding under this part, the Federal Maritime Commission may subpoena witnesses and evidence.

(2) In an investigation or adjudicatory proceeding under this part,

(A) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.); and

(B) a witness is entitled to the same fees and mileage that would have been paid if the witness had been a witness in a court of the United States, unless otherwise prohibited by law.

(b) Failure To Provide Information.--(1) If a common carrier does not provide information required to be provided by a subpoena issued under this section in an investigation or adjudicatory proceeding under this part, the Commission, after notice and an opportunity for a hearing, may--

(A) suspend any tariff of the carrier or the carrier's right to use a tariff of any conference of which the carrier is a member; and

(B) request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by the common carrier. Upon request, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 70104 of this title.

(2) If a common carrier alleges, in defense of its failure to comply with a subpoena or discovery order required under this section in an investigation or adjudicatory proceeding under this part, that the evidence is located in a foreign country and cannot be provided because of the laws of that country, the Commission immediately shall notify the Secretary of State of the failure and allegation. On receiving the notification, the Secretary shall consult promptly with the government of that country to assist the Commission in obtaining the evidence sought.

(c) Presidential Determination.--The Commission shall submit immediately to the President an order issued under subsection (b)(1) of this section. Within 10 days after receiving the order, the President may disapprove it if the President finds that disapproval is required for reasons of national defense or the foreign policy of the United States. If not disapproved, the order of the Commission becomes effective at the end of the 10-day period.

Sec. 41105. Orders and rehearings

(a) Notice and Hearing Requirements.--The Federal Maritime Commission shall provide notice and an opportunity for a hearing before issuing an order related to a violation of this part, or a regulation prescribed under this part. The Commission may issue an order on complaint or on the Commission's own initiative.

(b) Period of Effectiveness.--An order of the Commission remains in effect as stated in the order or until modified, suspended, or set aside by the Commission or a court of competent jurisdiction. The Commission may modify, suspend, or set aside any of its orders.

(c) Rehearings.-On application of a party to a proceeding, the Commission may grant a rehearing on the order or any matter decided in the order. Except by order of the Commission, an application for, or granting of, a rehearing does not stay that order.

Sec. 41106. Reparations awards

(a) Orders To Pay Reparations.--The Federal Maritime Commission shall direct the payment of reparations to a complainant for actual injury caused by a violation of this part. An order to pay reparations for a violation of this part shall include an amount for--

(1) loss of interest at commercial rates compounded from the date of injury; and

(2) reasonable attorney's fees.

(b) In a proceeding begun under section 41101 of this title--

(1) the Commission may order an additional reparations award on a showing that the injury was caused by an activity prohibited under section 41302(c) or (d), 41303(a)(3) or (6), or 41306(a)(1) or (3) of this title, but the total amount of the award may not be more than 2 times the amount of the injury to the person filing the complaint; and

(2) the amount of the award for an injury caused by an activity prohibited under section 41303(a)(4)(A) or (B) of this title shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

Sec. 41107. Enforcement of subpoenas and nonreparation orders

(a) Civil Actions.--If, in a matter commenced under this part, a person does not comply with a subpoena issued under section 41104 of this title, or violates a nonreparation order of the Federal Maritime Commission, the Attorney General, at the request of the Commission, or a party injured by the failure or violation, may bring a civil action in a district court of the United States having jurisdiction of the parties. If, after hearing, the court decides that the subpoena or order was properly made and duly issued, the court shall enforce the subpoena or order.

(b) Time Limit on Bringing Actions.--A civil action to enforce a nonreparation order related to a matter under this part must be brought within 3 years after the date that the order was violated.

Sec. 41108. Enforcement of reparation orders

(a) Civil Actions.--If an order of the Federal Maritime Commission providing for a reparations award is violated, the person to whom the award was made may bring a civil action in a district court of the United States having jurisdiction of the parties.

(b) Parties and Service of Process.--All parties in whose favor the Commission has made a reparations award by one order may be joined as plaintiffs, and all other parties in the order may be joined as defendants, in one civil action in a judicial district in which

any one plaintiff could maintain an action against any one defendant. Service of process in the action against a defendant not found in that district may be made in a district in which any office of that defendant is located or in which any port of call on a regular route operated by that defendant is located. Judgment may be entered for any plaintiff against the defendant liable to the plaintiff.

(c) Nature of Review.-In a civil action brought under this section, the findings and order of the Commission are prima facie evidence of the facts stated in the findings and order.

(d) Costs.-The plaintiff is not liable for costs of the action or for costs of any subsequent stage of the proceedings unless they accrue on the plaintiff's appeal. A prevailing plaintiff is entitled to reasonable attorney's fees to be assessed and collected as part of the costs of the action.

(e) Time Limit on Bringing Actions.-A civil action brought under this section related to a matter under this part must be brought within 3 years after the date that the order was violated.

Sec. 41109. Civil penalty procedures

(a) General Authority.-Until a matter is referred to the Attorney General, after notice and opportunity for a hearing, the Federal Maritime Commission may assess a civil penalty provided for in this part, except as provided in subsection (b) of this section. In determining the amount of the penalty, the Commission shall consider the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) Exception.--A civil penalty may not be imposed on a person for conspiracy to violate section 41302(b) or 41303(a)(1) or (2) of this title or to defraud the Commission by concealing any such violation.

(c) Compromise and Remission.-The Commission may compromise or remit, with or without conditions, a civil penalty imposed under this part until the matter is referred to the Attorney General.

(d) Time Limit on Beginning Assessment Proceedings.-A proceeding to assess a civil penalty under this section must begin within 5 years from the date the violation occurs.

(e) Civil Actions To Collect.-If a person does not pay an assessment of a civil penalty after it has become final, the Attorney General at the request of the Commission may bring a civil action in an appropriate district court of the United States to collect the amount assessed. The court shall enforce the order of the Commission unless it finds that the order was not properly made and duly issued.

(f) Review of civil penalty.--A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28, United States Code.

Sec. 41110. Civil actions by the Commission

(a) General Violations.-In connection with an investigation under section 41101 or 41102 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or conducts business. After notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period that does not extend more than 10 days after the Commission has issued an order disposing of the issues under investigation.

(b) Agreements.-(1) If, at any time after an agreement is filed or becomes effective under section 40304 of this title, the Commission decides that the agreement is likely, by reducing competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation service costs, the Commission, after providing notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement.

(2) In an action under this subsection--

(A) the court may issue a temporary restraining order or a preliminary injunction;

(B) on a showing that the agreement is likely, by reducing competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation service costs, the court may issue a permanent injunction;

(C) the burden of proof is on the Commission; and

(D) the court may not allow a third party to intervene.

(3) The only remedy the Commission has when the Commission decides the agreement violates this subsection is bringing a civil action under this subsection.

(c) Requests for Additional Information.-If a person filing an agreement, or an officer, director, partner, agent, or employee of that person, does not comply substantially with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court--

(1) may order compliance with the Commission's request for the information and documents;

(2) shall extend the period specified in section 40304(c)(1)(B) of this title until there has been substantial compliance; and

(3) may grant other equitable relief that the court decides is appropriate.

Sec. 41111. Civil actions by sworn complainants

(a) Bringing Actions.--After filing a sworn complaint under section 41101 of this title, the complainant may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which--

(1) the Federal Maritime Commission has brought a civil action against the defendant under section 41110(a) of this title; or

(2) the defendant resides or conducts business, if the Commission has not brought the civil action.

(b) Temporary Restraining Order or Preliminary Injunction.-After notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period that does not extend more than 10 days after the Commission has issued an order disposing of the complaint.

(c) Attorneys' Fees.--A defendant prevailing in a civil action brought under this section shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the action.

Sec. 41112. Representation

(a) District Courts.-On notice to the Attorney General, the Federal Maritime Commission may represent itself in a proceeding in a district court of the United States brought under section 41110 of this chapter.

(b) Courts of Appeals.-With the approval of the Attorney General, the Commission may represent itself in a proceeding in a court of appeals of the United States resulting from a civil action brought under this chapter.

CHAPTER 413-PROHIBITED ACTS AND PENALTIES

Sec.

41301. Joint ventures and consortiums.

41302. Violations by persons.

41303. Common carrier violations.

- 41304. Marine terminal operator violations.
- 41305. Ocean transportation intermediary violation.
- 41306. Ocean common carrier violations through concerted action.
- 41307. Disclosing information.

Sec. 41301. Joint ventures and consortiums

In this chapter, a joint venture or consortium of at least 2 common carriers operating as a single entity is deemed to be a single common carrier.

Sec. 41302. Violations by persons

(a) General Penalties.--Except as otherwise provided in this part, a person violating this part, or a regulation or order of the Federal Maritime Commission under this part, is liable to the United States Government for a civil penalty of not more than \$5,000, or, if willfully and knowingly committing a violation of this part, not more than \$25,000.

(b) Reduced Rate Violation.--(1) No person may knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable.

(2) A person who violates paragraph (1) of this subsection is liable to the Government for a civil penalty of not more than \$25,000.

(3) Notwithstanding paragraph (1) of this subsection, neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.

(c) Invalid Agreement Violation.--(1) No person may operate under an agreement required to be filed under chapter 403 of this title that has not become effective under chapter 403 of this title, or that has been rejected, disapproved or canceled.

(2) A person who violates paragraph (1) of this subsection is liable to the Government for a civil penalty of not more than \$5,000, or, if the violation is willfully and knowingly committed, not more than \$25,000.

(d) Inconsistent Operations Violation.--(1) No person may operate under an agreement required to be filed under chapter 403 of this title except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

(2) A person who violates paragraph (1) of this subsection is liable to the Government for a civil penalty of not more than \$5,000, or, if the violation is willfully and knowingly committed, not more than \$25,000.

(e) Failure To File Record, Rate, or Report.--A person not filing a record, rate, or report required under section 40106 of this title is liable to the United States Government for a civil penalty of not more than \$5,000 or, if willfully and knowingly not filed, of not more than \$25,000.

(f) Continuing Violations.--A civil penalty under this section applies to each day a violation of this section continues.

Sec. 41303. Common carrier violations

(a) Violations.--A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not--

(1) by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means, allow a person to obtain transportation for property at less than the rate or charge contained in the carrier's tariff or service contract;

(2) provide service in the liner trade that--

(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title unless excepted or exempted under section 40105 or 40501 of this title; or

(B) is under a tariff or service contract that has been suspended or prohibited by the Commission under chapter 407 or 425 of this title;

(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when those accommodations are available, or resort to any other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service under a tariff, engage in any unfair or unjustly discriminatory practice about--

(A) rates or charges;

(B) cargo classifications;

(C) space accommodations or other facilities, with reasonable consideration being given to the proper loading of the vessel and the available tonnage;

(D) loading and landing freight; or

(E) adjusting and settling claims;

(5) for service under a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates with respect to any port;

(6) use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of the trade;

(7) offer or pay any deferred rebate;

(8) for services under a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

(9) for service under a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

(10) unreasonably refuse to deal or negotiate;

(11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff under section 40501 of this title and a bond, insurance, or other surety under section 40902 of this title;

(12) knowingly and willfully make a service contract with an ocean transportation intermediary that does not have a tariff under section 40501 of this title and a bond, insurance, or other surety under section 40902 of this title, or with an affiliate of such an ocean transportation intermediary;

(13) knowingly disclose, offer, solicit, or receive any information about the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information may--

(A) be used to the detriment or prejudice of the shipper or consignee;

(B) improperly disclose to a competitor the business transactions of the shipper or consignee; or

(C) be used to the detriment or prejudice of any common carrier; or

(14) fail to establish, observe, and enforce just and reasonable rules and practices related to receiving, handling, storing, and delivering property.

(b) Civil Penalties.--(1) A common carrier violating subsection (a)(1), (2)(A), and (3)-(14) of this section is liable to the United States Government for a civil penalty of not more than \$5,000 or, if willfully and knowingly committed, of not more than \$25,000.

(2) A common carrier violating subsection (a)(2)(B) of this section, or accepting or handling cargo for transportation under a tariff suspended under section 41104(b)(1)(A) of this title or subsection (c) of this section, is liable to the Government for a civil penalty of not more than \$50,000 for each shipment.

(3) Each day of a continuing violation constitutes a separate offense.

(c) Suspension of Tariffs.--If a common carrier violates subsection (a)(1), (2), or (7) of this section, the Federal Maritime Commission may suspend any tariff of that carrier, or that carrier's right to use a tariff of a conference of which it is a member, for not more than 12 months. The Commission shall submit immediately to the President an order issued under this section. Within 10 days after receiving the order, the President may disapprove it if the President finds that disapproval is required for reasons of national defense or the foreign policy of the United States. If not disapproved, the order of the Commission becomes effective at the end of the 10-day period.

(d) Vessel Liens.--A penalty imposed on a common carrier under this section constitutes a lien upon the vessels operated by the common carrier, and any of its vessels may be libeled therefore in the district court of the United States for the district in which it may be found.

Sec. 41304. Marine terminal operator violations

(a) Violations and Civil Penalties.--A marine terminal operator is liable to the United States Government for a civil penalty of not more than \$5,000, or, if willfully and knowingly committed, not more than \$25,000, if that operator--

(1) unreasonably refuses to deal or negotiate;

(2) knowingly discloses, offers, solicits, or receives any information about the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information may--

(A) be used to the detriment or prejudice of the shipper or consignee;

(B) improperly disclose to a competitor the business transactions of the shipper or consignee; or

(C) be used to the detriment or prejudice of any common carrier;

(3) fails to establish, observe, and enforce just and reasonable rules and practices related to receiving, handling, storing, or delivering property;

(4) agrees with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in providing terminal services to, any common carrier or ocean tramp; or

(5) gives any undue or unreasonable preference or advantage or imposes any undue or unreasonable prejudice or disadvantage with respect to any person.

(b) Continuing Violations.--Each day of a continuing violation constitutes a separate offense.

Sec. 41305. Ocean transportation intermediary violation

(a) Violations and Civil Penalties.--An ocean transportation intermediary is liable to the United States Government for a civil penalty of not more than \$5,000, or, if willfully and knowingly committed, not more than \$25,000, if that intermediary--

(1) fails to establish, observe, and enforce just and reasonable rules and practices related to receiving, handling, storing, or delivering property; or

(2) knowingly discloses, offers, solicits, or receives any information about the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information may--

(A) be used to the detriment or prejudice of the shipper or consignee;

(B) improperly disclose to a competitor the business transactions of the shipper or consignee; or

(C) be used to the detriment or prejudice of any common carrier.

(b) Continuing Violations.--A civil penalty under this section applies to each day of a violation under this section.

Sec. 41306. Ocean common carrier violations through concerted action

(a) Violations.--A conference or group of at least two common carriers may not--

(1) boycott or take other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in a predatory practice designed to eliminate participation, or deny entry, in a particular trade, of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a non-ocean carrier or group of non-ocean carriers, such as truck, rail, or air operators, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this title, on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, except that this clause does not prohibit the setting and publishing of a joint through rate by a conference, a joint venture, or an association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean transportation intermediary, as defined in section 40102(17)(A) of this title, or limit that compensation to less than a reasonable amount;

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as--

(A) required by law of the United States;

(B) required by the law of the importing or exporting country;

(C) agreed to by a shipper in a service contract; or

(D) permitted by section 40303(d) of this title; or

(7) for service under a service contract, engage in an unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary; or

(8) for service under a service contract, give an undue or unreasonable preference or advantage or impose an undue or unreasonable prejudice or disadvantage with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary.

(b) Civil Penalties.--A conference or group of at least two common carriers violating this section is liable to the United States Government for a civil penalty of not more than \$5,000 for each day the violation continues, or, if willfully and knowingly committed, of not more than \$25,000 for each day.

Sec. 41307. Disclosing information

(a) General.--Section 41303(a)(13) of this title does not prevent a person from giving information in response to legal process, to the United States Government, the Federal Maritime Commission, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement that is effective under this part.

(b) Disclosure to Conference or Designee.--(1) An ocean common carrier that is a party to a conference agreement approved under this part, an officer, employee, agent, receiver, trustee, or lessee of that carrier, or another person authorized by the carrier to receive information, may give information to the conference or any person or agency designated by the conference.

(2) The conference or its designee may solicit or receive information only to--

(A) decide when a shipper or consignee has breached an agreement with the conference or its members;

(B) decide whether a member of the conference has breached the conference agreement; or

(C) compile statistics on cargo movement.

PART B--ACTIONS TO ADDRESS FOREIGN PRACTICES AND CONDITIONS UNFAVORABLE TO SHIPPING

CHAPTER 421 - DEFINITIONS

Sec.
42101. Definitions.

Sec. 42101. Definitions

In this part--

(1) "common carrier" has the meaning given the term in section 40102 of this title.

(2) "foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a foreign country.

(3) "maritime services" means port-to-port transportation of cargo by vessels, whether operated by an ocean common carrier or a tramp operator or a bulk operator, except that, for purposes of chapter 425 of this title, the term means port-to-port transportation of cargo by vessels operated by an ocean common carrier.

(4) "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates for themselves and others.

(5) "marine terminal operator" has the meaning given the term in section 40102 of this title.

(6) "ocean common carrier" has the meaning given the term in section 40102 of this title.

(7) "ocean transportation intermediary" has the meaning given the term in section 40102 of this title.

(8) "shipper" has the meaning given the term in section 40102 of this title.

(9) "shippers' association" has the meaning given the term in section 40102 of this title.

(10) "United States carrier" means an ocean common carrier operating vessels documented under chapter 121 of this title.

(11) "United States oceanborne trade" means the transportation of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

CHAPTER 423--REGULATIONS TO ADDRESS CONDITIONS UNFAVORABLE TO SHIPPING IN FOREIGN COMMERCE

Sec.

42301. General.

42302. Actions authorized.

42303. Enforcement.

42304. Consultations with other agencies.

42305. Regulations of other agencies.

42306. Government-owned vessels.

Sec. 42301. General

To assist in carrying out the objectives and policy of section 50101 of this title, the Federal Maritime Commission is authorized and directed to prescribe regulations affecting shipping in foreign commerce, including maritime-related services, not in conflict with laws of the United States, to adjust or meet general or special conditions unfavorable to shipping in that commerce, whether in a particular trade or on a particular route or in commerce generally, that arise out of, or result from--

- (1) laws or regulations of a foreign country; or
- (2) competitive methods, pricing practices, or practices employed by owners, operators, agents, or masters of vessels of a foreign country.

Sec. 42302. Actions authorized

If the Federal Maritime Commission finds that a condition specified in section 42301 of this title exists, the Commission may take action it considers necessary and appropriate to meet or adjust that condition, including any action specified in chapter 431 of this title.

Sec. 42303. Enforcement

If a person violates an order of the Federal Maritime Commission issued under this chapter or fails to comply with a subpoena issued under section 42903 of this title in a proceeding under this chapter, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and the court shall enforce the order unless it determines that the order was not regularly made and duly issued.

Sec. 42304. Consultations with other agencies

The Federal Maritime Commission may consult with, seek the cooperation of, or make recommendations to, another appropriate agency before acting under this chapter.

Sec. 42305. Regulations of other agencies

(a) Request by the Commission.--To assist in carrying out the objectives and policy of section 50101 of this title, the Federal Maritime Commission is authorized and directed to request the head of an agency to suspend, modify, or annul a regulation prescribed by the agency, or to prescribe a new regulation, affecting shipping in foreign commerce, except a regulation related to the Public Health Service, the Consular Service, and the inspection of vessels by the head of the Department in which the Coast Guard is operating.

(b) Regulations Affecting Shipping.--The head of an agency may prescribe a regulation affecting shipping in foreign commerce (except a regulation related to the Public Health Service, the Consular Service, or the inspection of vessels by the head of the Department in which the Coast Guard is operating) only after--

(1) the regulation has been submitted to the Commission for its approval;
and

(2) the Commission or the President (as provided in subsection (c) of this section) has taken final action on the regulation.

(c) Submission to the President.--If the head of an agency refuses to act as requested by the Commission under subsection (a) of this section, or objects to the final action of the Commission under subsection (b) of this section, the Commission or the head of the agency may submit the facts about the regulation to the President. The President may prescribe, suspend, modify, or annul the regulation.

Sec. 42306. Government-owned vessels

No regulation may in any manner give a vessel owned by the United States Government preference over a vessel documented under chapter 121 of this title not owned by the Government.

CHAPTER 425 - PROTECTION AGAINST FOREIGN PRACTICES AFFECTING U.S. CARRIERS

Sec.

42501. Authority to conduct investigations.

42502. Time limit for proceedings.

42503. Action against foreign carriers.

42504. Submission to President.

42505. Judicial review.

Sec. 42501. Authority to conduct investigations

The Federal Maritime Commission shall investigate whether any law, regulation, policy, or practice of the government of a foreign country, or any practice of a foreign carrier or other person providing maritime or maritime-related services in a foreign country, results in conditions that--

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers

or other persons providing maritime or maritime-related services in the United States.

Sec. 42502. Time limit for proceedings

The Federal Maritime Commission shall complete an investigation under this chapter and issue its decision within 120 days after it is begun, except that the Commission may extend this 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether the conditions specified in section 42501 of this title exist. Notice of an extension shall clearly state the reasons for the extension.

Sec. 42503. Action against foreign carriers

Subject to section 42504 of this title, if the Federal Maritime Commission determines, after notice and opportunity for comment or a hearing, that the conditions specified in section 42501 of this title exist, the Commission shall take action it considers necessary and appropriate against a foreign carrier that is contributing to, or whose government is contributing to, those conditions, in order to offset those conditions. Commission action may include actions specified in chapter 431 of this title.

Sec. 42504. Submission to President

(a) Submission.--Before a determination under section 42503 of this title becomes effective or a request is made under section 43101(a)(6) or 43101(a)(7) of this title, the determination shall be submitted immediately to the President.

(b) Presidential Action.--Within 10 days after receiving the Federal Maritime Commission's order, the President may disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(c) Effective Date.--If not disapproved, the order of the Commission becomes effective on the 10th day after it has been submitted to the President.

Sec. 42505. Judicial review

Any regulation or final order of the Federal Maritime Commission issued under this chapter shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

CHAPTER 427--PROTECTION OF COMMERCE BETWEEN FOREIGN PORTS

Sec.

42701. Actions authorized.

42702. Submission to President.

Sec. 42701. Actions authorized

Subject to section 42702 of this title, if the Federal Maritime Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with any person, or the government of a foreign country, has unduly impaired access of a documented vessel to ocean commerce between foreign ports, the Commission shall take action it considers appropriate, including actions specified in chapter 431 of this title.

Sec. 42702. Submission to President

(a) Submission.--Before a finding under section 42701 of this title becomes effective or a request is made under section 43101(a)(6) or 43101(a)(7) of this title, the determination shall be submitted immediately to the President.

(b) Presidential Action.--Within 10 days after receiving the Federal Maritime Commission's order, the President may disapprove the finding in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(c) Effective Date.--If not disapproved, the order of the Commission becomes effective on the 10th day after it has been submitted to the President.

CHAPTER 429--PROCEEDINGS

Sec.

42901. Initiation of proceedings.

42902. Reports and other information.

42903. Subpoenas and discovery.

42904. Procedures in proceedings under chapter 427.

Sec. 42901. Initiation of proceedings

(a) General.--The Federal Maritime Commission may initiate a regulation under chapter 423 or a proceeding under chapters 425 or 427 either on its own motion or in response to a petition.

(b) Petition under Chapter 423.--Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, marine terminal operator, or any agency, may file a petition for relief under chapter 423 of this title.

(c) Petition under Chapters 425 or 427.--Any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary or marine

terminal operator, or any agency, may file a petition for investigation under chapters 425 or 427 of this title.

Sec. 42902. Reports and other information

(a) Chapters 423 and 425 Reports.--(1) In order to carry out chapters 423 and 425 of this title, the Federal Maritime Commission may order any person, or any officer, receiver, trustee, lessee, agent or employee thereof, to file with the Commission any periodic or special report, answers to questions, records, documentary material, or other information the Commission considers appropriate. The Commission may order that the response be made under oath. The response shall be given in the form and within the time ordered by the Commission.

(2) Notwithstanding any other provision of law, the Commission may determine that any information submitted to the Commission under this section, or otherwise in a proceeding under this chapter, not be disclosed to the public.

(b) Chapter 427 Reports.--(1) In carrying out chapter 427 of this title, the Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier to file with the Commission a record, rate, charge, account or periodic or special report, related to the business of the carrier. The record, rate, charge, account or report shall be under oath if the Commission requires and shall be filed in the form and at the times prescribed by the Commission.

(2) The Commission may not--

(A) release conference minutes required to be filed under this section to third parties; or

(B) publish those minutes.

Sec. 42903. Subpoenas and discovery

(a) Subpoenas Generally.--In an investigation or other proceeding under this part, the Federal Maritime Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(b) Subpoena Issued under Chapter 423.--In a proceeding under chapter 423 of this title, for failure to supply information ordered to be produced or compelled by subpoena, the Commission may--

(1) after notice and an opportunity for hearing, suspend a tariff of a common carrier or that common carrier's right to use a tariff of a conference of which it is a member; or

(2) assess a civil penalty of not more than \$5,000 for each day that the information is not provided.

(c) Subpoena Issued under Chapter 427.--In a proceeding under chapter 427 of this title, for failure to supply information ordered to be produced or compelled by subpoena, the Commission may--

(1) after notice and an opportunity for hearing, suspend a tariff of a common carrier or that common carrier's right to use a tariff of a conference of which it is a member;

(2) request the Attorney General to bring a civil action in a district court of the United States having jurisdiction of the parties, which court shall enforce the subpoena unless it determines that the subpoena was not properly made and duly issued; and

(3) make a request under section 43101(a)(6) of this title.

(d) Discovery under Chapter 423.--(1) In a proceeding under chapter 423 of this part, the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, conform to the Federal Rules of Civil Procedure, (28 App. U.S.C.).

(2) Subject to funds being provided by appropriations acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States.

(e) Discovery under Chapter 427.--(1) In a proceeding under chapter 427 of this title, a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, conform to the Federal Rules of Civil Procedure, (28 App. U.S.C.).

(2) A witness is entitled to the same fees and mileage that would have been paid if the witness had been a witness in a court of the United States.

Sec. 42904. Procedures in proceedings under chapter 427

Except as otherwise provided in this part, a proceeding under chapter 427 of this title shall be conducted in the same manner, and with the same powers, as an investigation under section 41102 of this title, and an order entered in a proceeding under chapter 427 shall be enforced and reviewed in the same manner as a nonreparation order entered in a proceeding under section 41102.

CHAPTER 431--SANCTIONS

Sec.

- 43101. Actions.
- 43102. Operations under a suspended tariff or service contract.
- 43103. Failure to provide information.
- 43104. Consultation.

Sec. 43101. Actions

(a) General.--If the Federal Maritime Commission finds that conditions that are unfavorable to shipping under section 42301 of this title exist, or determines that the conditions specified in section 42501 of this title exist, or makes a finding under section 42701 of this title that the access of a U.S. vessel has been unduly impaired, the Commission may--

(1) limit voyages to and from ports of the United States or the amount or type of cargo carried;

(2) suspend, in whole or in part, a common carrier's tariff, including the right of an ocean common carrier to use a tariff of a conference in United States trades of which it is a member, for any period the Commission specifies;

(3) suspend, in whole or in part, the right of an ocean common carrier to operate under an agreement filed with the Commission, including an agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(4) suspend, in whole or in part, a service contract, including the right of an ocean common carrier to use a service contract of an agreement in United States trades of which it is a member for any period the Commission specifies;

(5) impose a fee of not more than \$1,000,000 per voyage;

(6) request that the Secretary of the Treasury--

(A) refuse or revoke the clearance required under section 70104 of this title to a vessel of--

(i) a country that is named in a regulation issued by the Commission under chapter 423 of this title,

(ii) a foreign carrier named in an order issued under chapter 425 of this title, or

(iii) a common carrier identified in an order issued under chapter 427 of this title; and

(B) collect any fees imposed by the Commission under chapter 423 of this title and paragraph (5) of this subsection;

(7) request that the Secretary of the department in which the Coast Guard is operating deny entry for purpose of oceanborne trade to any port or place in the United States or the navigable waters of the United States, or detain at the port or place in the United States from which it is about to depart for another port or place in the United States, a vessel of--

(A) a country that is named in a regulation issued by the Commission under chapter 423 of this title,

(B) a foreign carrier named in an order issued under chapter 425 of this title, or

(C) a common carrier identified in an order issued under chapter 427 of this title; and

(8) take any other action the Commission finds appropriate under sections 42302, 42503 or 42701 of this title.

(b) Secretarial Response to Requests.--The Secretary of the Treasury and the Secretary of the department in which the Coast Guard is operating shall carry out a request of the Commission under this section.

Sec. 43102. Operations under a suspended tariff or service contract

(a) Civil penalties under Chapter 423.--A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under section 43101(a)(2) or 43101(a)(4) of this title, or section 42903(b) of this title, or after its right to use another tariff or service contract has been suspended under those sections, in a proceeding under chapter 423 of this title, is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff or service contract.

(b) Civil Penalties under Chapter 425 or 427.--A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended or whose right to use a tariff has been suspended under section 43101(a)(2) of this title, in a proceeding under chapters 425 or 427 of this title, or a tariff that has been suspended or after its right to use a tariff has been suspended under section 42903(c) of this title, is subject to a civil penalty of not more than \$50,000 for each shipment.

Sec. 43103. Failure to provide information

(a) Civil Penalty under Chapter 423.--A person who, in a proceeding under chapter 423 of this title, fails to file a report, answer, documentary material, or other

information required under section 42902 of this title shall be liable to the United States for a civil penalty of not more than \$5,000 for each day that the information is not provided.

(b) Civil Penalty under Chapter 427.--A common carrier that, in a proceeding under chapter 427 of this title, fails to file a report or other information required under section 42902 of this title shall be liable to the United States for a civil penalty of not more than \$5,000 for such failure, or, if knowingly and willfully committed, \$25,000. Each day of a continuing failure to comply constitutes a separate failure. The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels operated by that common carrier, and any such vessel may be libeled therefore in the district court of the United States for the district in which it may be found.

Sec. 43104. Consultation

The Federal Maritime Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this chapter.

PART C-EVIDENCE OF FINANCIAL RESPONSIBILITY--PASSENGER TRANSPORTATION

CHAPTER 441-EVIDENCE OF FINANCIAL RESPONSIBILITY--PASSENGER TRANSPORTATION

Sec.

44101. Application.

44102. Financial responsibility to indemnify passengers for nonperformance
of transportation.

44103. Financial responsibility to pay liability for death or injury.

44104. Civil penalty.

44105. Refusal of clearance.

44106. Conduct of proceedings.

Sec. 44101. Application

This chapter applies to a vessel that--

(1) has sleeping accommodations for at least 50 passengers; and

(2) boards passengers at a port in the United States.

Sec. 44102. Financial responsibility to indemnify passengers for nonperformance of
transportation

(a) Filing Requirement.--A person in the United States may arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies only if the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.

(b) Satisfactory Evidence.--To satisfy subsection (a) of this section, a person must file, in the form the Commission may require--

(1) information the Commission considers necessary; or

(2) a copy of a bond or other security acceptable to the Commission.

(c) Authorized Issuer of Bond.--if a bond is filed, it must be issued by a bonding company authorized to do business in the United States.

Sec. 44103. Financial responsibility to pay liability for death or injury

(a) General Requirement.--The owner or charterer of a vessel to which this chapter applies shall establish, under regulations the Federal Maritime Commission prescribes, financial responsibility to meet liability for death or injury to passengers or other individuals on a voyage to or from a port in the United States.

(b) Amounts.--(1) The amount of financial responsibility required under subsection (a) of this section shall be based on the number of passenger accommodations as follows:

(A) \$20,000 for each of the first 500 passenger accommodations.

(B) \$15,000 for each of the next 500 passenger accommodations.

(C) \$10,000 for each of the next 500 passenger accommodations.

(D) \$5,000 for each additional passenger accommodation over 1,500.

(2) If the owner or charterer is operating more than one vessel subject to this chapter, the amount of financial responsibility shall be based on the number of passenger accommodations on the vessel with the largest number of passenger accommodations.

(c) Availability To Pay Judgment.--The amount determined under subsection (b) of this section shall be available to pay a judgment for damages for death or injury to a passenger or other individual on a voyage to or from a port in the United States without regard to the dollar amounts specified in subsection (b)(1)(A)-(D).

(d) Means of Establishing.--Financial responsibility under this section may be established by one or more of the following if acceptable to the Commission: